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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,033	10/07/2003	Peter V. Czipott	MED/US-51	2724

22875 7590 05/08/2007
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EXAMINER

LEDYNH, BOT L

ART UNIT	PAPER NUMBER
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2862

MAIL DATE	DELIVERY MODE
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05/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/681,033

Applicant(s)

CZIPOTT ET AL.

Examiner

Bot LeDinh

Art Unit

2862

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01-08-07
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 27-41 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-26 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date
:3/2/06; 1/3/06; 12/13/04
7/29/04; 6/9/04; 2/23/04.

DETAILED ACTION

Formal drawings are required.

Applicant's election with traverse of group I (apparatus), species II (Fig.2) in the reply filed on 1-08-07 is acknowledged. The traversal is partly found persuasive.

The traversal is on the ground(s) that the restriction requirement is improper because of the following arguments:

(1) MPEP 806.05(e) requires the comparison of "the process *as claimed*" and "the apparatus *as claimed*".

(2) "[T]he Examiner has stated that the method can be practiced by two different embodiments of the claimed apparatus, as recited in two apparatus claims. If this were proper, then a restriction requirement between method and apparatus would be proper in any case where two different embodiments of the apparatus are recited in two different claims" (emphasis, original).

(3) The Applicants assume that the second stage of the restriction requirement (i.e., election of species) is operative, regardless of which "invention" is elected in the first stage (restriction requirement of groups I-II) because the Examiner has not made this second stage restriction requirement dependent upon electing either the apparatus "invention" or the method "invention".

(4) Applicants also state that "if any one of claims 1 through 5, 37, or 38 is found allowable, claims to all six Species must be allowed."

As to (1) and (2), Examiner agrees with the Applicants that the “another materially different apparatus” should not be claimed by the Applicants. However, to give an example proving that the process *as claimed* can be practiced by another materially different apparatus, the Examiner hereby provides the following “another materially different apparatus”: A cylindrical tube large enough for a patient to be horizontally passed through, the tube used for excluding magnetic objects contained on or in the body of the patient near MRI instruments, comprising a tube substrate having an array of sensors arranged thereon, the tube substrate positioned around the body of the patient to scan the whole body of the patient, a processor processing the signals from the sensor array to detect magnetic field of the objects. Another example would be that of Kopp (20030171669). The Kopp's abstract describes that “[a]n MRI protector for protecting personnel and the MRI apparatus from the introduction of ferrous articles into the magnetic field of the MRI has an array of Hall effect sensors oriented to scan the magnetic field of the MRI. The Hall effect sensors are oriented to scan the magnetic field at the access door of the shielded MRI room. The sensors are connected to a central processing unit (CPU) which analyses the output of the sensors and propagates a warning when the presence of ferrous articles affects the magnetic field of the MRI.” See also Kopp's Figures and claims. Thus, the process *as claimed* can be practiced by another materially different apparatus described by Kopp.

As to (3), the Applicants' assumption contradicts the record. The Applicants' attention is directed to the Examiner's statement in the restriction requirement "[a]fter the restriction requirement being elected, the following **election of species** applies:..." Thus, the species II of Figure 2 of the apparatus invention group I is elected and examined.

As to (4), Applicants' statement "if any one of claims 1 through 5, 37, or 38 is found allowable, claims to all six Species must be allowed" is improper (emphasis added). Applicants will be only entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicants elected claims (species II) 1-6, 8-10, 24-26 and 37-40 to be examined. Because claims 37-40 read on the non-elected group II, they are withdrawn from consideration by the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

Allowable Subject Matter

Claims 1-26 are allowed.

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It should be noted that claims 7, 11-23 have been rejoined, examined and allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Bot LeDynch whose telephone number is 5712722231. The Examiner normally does not work on Fridays. The examiner can normally be reached on Maxiflex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 5712722180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BL/ 2007



Bot LeDynch, J.D., D.A., Ph.D.
Primary Examiner